

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**JAN 06 2006**

**CATHY A. CATTERSON, CLERK**  
U.S. COURT OF APPEALS

JOSEPH JOHNSON, JR.,

Petitioner - Appellant,

v.

SANTA CLARA COUNTY; JAMES  
BABCOCK, Chief,

Respondents - Appellees.

No. 05-15037

D.C. No. CV-03-00235-SI

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Northern District of California  
Susan Yvonne Illston, District Judge, Presiding

Argued and Submitted December 5, 2005  
San Francisco, California

Before: TROTT, T.G. NELSON, and PAEZ, Circuit Judges.

Joseph Johnson, Jr. appeals the district court's denial of his petition for a writ of habeas corpus under 28 U.S.C. § 2241. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

Because the SVPA is civil rather than criminal or punitive in form; *see Hubbart v. Superior Court of Santa Clara County*, 81 Cal. Rptr. 2d 492, 514 (Cal. 1999); *see also Kansas v. Hendricks*, 521 U.S. 346, 361 (1997); Johnson does not have a right to bail under the Eighth Amendment. The district court therefore did not err in its rejection of Johnson's Eighth Amendment claim.

On the facts alleged in his habeas petition, Johnson does not have a due process right to bail pending trial on his SVP status. Although it is possible that substantial delay in SVP trial proceedings could constitute a due process violation, in this appeal, that issue is not properly before this court. The district court therefore did not err in rejecting Johnson's due process argument.

AFFIRMED.